

Members

Sen. Luke Kenley
Sen. Sue Landske
Sen. Rose Ann Antich-Carr
Sen. Anita Bowser
Rep. Robert Kuzman
Rep. John Frenz
Rep. Robert Behning
Rep. Ralph Foley
Professor Thomas B. Allington
Joe Champion
Hon. James Kirsch
Jon Laramore
Dave Remondini
Jennifer Thuma
Heather Willis



CODE REVISION COMMISSION

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LSA Staff:

John Stieff, Attorney for the Commission

Authority: IC 2-5-1.1-10

MEETING MINUTES¹

Meeting Date: September 8, 2004
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St., Room 223
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. Sue Landske; Sen. Rose Ann Antich-Carr; Rep. Robert Kuzman; Rep. John Frenz; Rep. Robert Behning; Professor Thomas B. Allington; Joe Champion; Jon Laramore; Jennifer Thuma; Heather Willis.

Members Absent: Sen. Luke Kenley; Sen. Anita Bowser; Rep. Ralph Foley; Hon. James Kirsch; Dave Remondini.

Staff Present: John Stieff, Director, Office of Code Revision, Legislative Services Agency; Rebecca Mortell, Deputy Director, Office of Code Revision; Craig Mortell, Deputy Director, Office of Code Revision; George Angelone, Deputy Director, Office of Bill Drafting and Research; Irma Reinumagi, Senior Staff Attorney,

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Office of Bill Drafting and Research; Sarah Burkman, Senior Staff Attorney, Office of Bill Drafting and Research; Dick Sheets, Editorial Assistant, Office of Code Revision.

I. CALL TO ORDER

The meeting was called to order at 1:35 p.m. by Senator Sue Landske, Acting Chair.

II. ELECTION OF CHAIRMAN

Representative John Frenz nominated Senator Luke Kenley to be the new Chairman of the Code Revision Commission. The motion was seconded by Mr. Jon Laramore and adopted by consent.

III. REVIEW OF MINUTES

The Commission approved by consent the minutes of the Commission's last meeting on October 28, 2003.

IV. INTRODUCTORY REMARKS

Mr. John Stieff, Director, Office of Code Revision, described four major projects for the Code Revision Commission's review during this legislative interim:

- (1) The annual technical corrections bill to correct errors in the Indiana Code.
- (2) A study topic assigned by the Legislative Council concerning administrative rule making procedures used by Indiana's statutorily created bodies corporate and politic.
- (3) A reintroduction of 2004 legislation, previously assigned to the Code Revision Commission, to change references from "poor relief" to "township assistance" in the Indiana Code.
- (4) The project to recodify elementary and secondary education provisions of Title 20 (Education) of the Indiana Code.

Mr. Stieff reported that the Office of Code Revision had republished the entire Indiana Code during the legislative interim. He said that this was the first time that the entire Indiana Code had been published in-house, at a great savings to Indiana taxpayers. He said the first CD versions of the Code would be available within a few days.

Mr. Stieff also reviewed unique publication dilemmas concerning the following sections of the Indiana Code, as the result of events during the last legislative session: IC 6-1.1-5.5-3; IC 6-1.1-18-12; IC 12-29-2-2; and IC 35-42-2-1. Mr. Stieff explained that the publication dilemma concerning the first three sections arose as the result of conflicts created by the last minute concurrence in HEA 1001 during the legislative session. He explained that the dilemma concerning IC 35-42-2-1 arose in the context of a veto override of P.L.281-2003. After consultation with LSA attorneys and management, and in consideration of the fact that IC 35-42-2-1 is a criminal provision that will be strictly construed against the State, it was decided to publish two versions of IC 35-42-2-1 as a conflict that would then be addressed in the 2005 technical corrections bill. The Commission concurred in the Office of Code Revision's publication decisions.

V. TECHNICAL CORRECTIONS BILL

Craig Mortell, Deputy Director of the Office of Code Revision (OCR), addressed the Commission about the 2005 Technical Corrections (TC) bill. Mr. Mortell distributed:

- (1) PD 3006, the first draft of the 2005 TC bill;

- (2) a SECTION-by-SECTION outline of PD 3006;
- (3) a supplementary draft containing SECTIONS proposed for addition to the contents of PD 3006; and
- (4) a SECTION-by-SECTION outline of the supplementary draft.

Mr. Mortell expressed his gratitude to many persons who provided information on technical problems suitable for resolution in the 2005 TC bill, and especially recognized the contribution of the attorneys of the LSA's Office of Bill Drafting and Research, who reviewed all of the 2004 Acts and informed OCR of the technical problems they found in their review. Mr. Mortell then discussed several types of technical corrections contained in PD 3006, including the following:

- Conflicts (instances in which two 2004 Acts amended a single Code section in inconsistent but not incompatible ways).
- Incorrect internal references.
- Miscellaneous wording and numbering problems (redundancies, missing words, misplaced articles, incorrectly numbered subdivisions, etc.).
- Prior millennium references (12 instances in which Code sections indicate that the current date is to be filled in on a form and mark the space where the current year is to be filled in with "19__").

Representative Frenz noted that SECTION 121 of PD 3006 would correct a technical problem in a noncode SECTION that will expire January 1, 2005. Mr. Mortell said he would delete that SECTION from the next draft of the TC bill.

Mr. Mortell said that OCR is careful not to include a correction for a perceived problem in the TC draft unless: (1) it is clear that there is a problem; (2) there is only one way in which the problem can be corrected; and (3) correcting the problem will not result in a substantive change in the law. Out of concern to maintain these standards, he said, OCR wishes to highlight certain "close calls" -- technical corrections presently included in PD 3006 or the supplementary draft that require careful analysis under these standards. He said that OCR wants to draw the Commission's attention to these "close call" corrections and other proposed corrections requiring additional explanation, to make sure that the Commission is comfortable with their inclusion in the 2005 TC bill. Mr. Mortell and Mr. Stieff discussed the following:

In PD 3006:

(1) IC 6-1.1-22.5-10: PD 3006 resolves the conflict between the version of IC 6-1.1-22.5-10 as added by P.L.1-2004 and the version of IC 6-1.1-22.5-10 as added by P.L.23-2004. The only difference between the two is that the P.L.1-2004 version includes the word or word fragment "not" in the following context: "the county treasurer shall give **not** notice of tax rates ...". Because the inclusion of "not" in this context appears to have been unintentional, PD 3006 strikes "not".

(2) IC 16-46-6-4: IC 16-46-6-4 provides for the appointment of a local health department representative to the Interagency State Council on Black and Minority Health but does not indicate who is to make the appointment. Because IC 16-46-6-4 provides that all the other non-legislative positions on the Interagency State Council are to be filled by appointment of the Governor, PD 3006 provides that the local health department representative is also to be appointed by the Governor.

(3) Title 33: PD 3006 corrects the following omissions and duplications of text that were detected after the Title 33 recodification:

- The section intended to be the final section of the new chapter IC 33-33-48-10 was omitted.

- The text intended for IC 33-33-65-4 was omitted and the text inserted in its place duplicates the text of IC 33-33-65-5;
- The text intended for IC 33-38-13-33 was omitted and the text inserted in its place duplicates the text of IC 33-38-13-31(a).
- The text intended for IC 33-42-6-1 was omitted and the text inserted in its place duplicates the text of IC 33-42-7-1.

In the Supplementary Draft:

(4) IC 31-40-2-1.7.

It appears that when IC 31-40-1-1.7 was added to the Code in 2003, it was numbered IC 31-40-1-1.7 instead of IC 31-40-2-1.7 by mistake. The supplementary draft repeals IC 31-40-1-1.7 and shifts its text to a new section numbered IC 31-40-2-1.7.

(5) County courts matter.

IC 33-30-2-1 is the section of the Indiana Code identifying the counties that have county courts. However, it does not identify those counties by name. Rather, it essentially provides that all counties have county courts except for: (A) counties having a circuit or superior court that has a small claims docket under IC 33-33; and (B) counties having a small claims court under IC 33-34. In fact, there are only three counties that still have county courts: Floyd, Madison, and Montgomery. The supplementary draft amends IC 33-30-2-1 so that it specifically names the three counties still having county courts but provides that any of these counties will cease to have a county court if its circuit or superior court is ever given a small claims docket under IC 33-33. Mr. Stieff explained that the Chief Justice had requested that the Title 33 recodification paint a very clear picture of the county court structure. Mr. Stieff stated that the proposed changes in the 2005 technical corrections bill would further simplify and clarify which counties have county courts.

Mr. Stieff informed the Commission that OCR was not seeking an immediate decision from the Commission as to whether these latter technical corrections should be included in the 2005 TC bill.

VI. RULEMAKING PROCEDURES FOR BODIES CORPORATE AND POLITIC

Mr. George Angelone, Deputy Director, Office of Bill Drafting and Research, informed the Commission that the Commission has been directed by the Legislative Council to study administrative rule making procedures used by Indiana's statutorily created bodies corporate and politic (Legislative Council Resolution 04-01, adopted May 19, 2004). Mr. Angelone presented the Commission with a printed memo dated August 30, 2004, which made the following points: The current statutes make compliance with the rule adoption procedure in IC 4-22-2 mandatory for some bodies corporate and politic, make compliance with IC 4-22-2 optional for some, specifically exempt some from complying with IC 4-22-2, and are silent as to whether some must comply with or are exempt from IC 4-22-2. The inconsistency and ambiguity of the current statutes make it difficult for the staff of the LSA to determine which documents issued by bodies corporate and politic should be printed in the Indiana Register and the Indiana Administrative Code, and a number of bodies corporate and politic now have in effect some rules that have been adopted under IC 4-22-2 and other rules that have not been filed or published under IC 4-22-2. Mr. Angelone offered the following potential legislative solutions:

- (1) Require all bodies corporate and politic to comply with IC 4-22-2.
- (2) Require all bodies corporate and politic to file their proposed rules with the Secretary of State but exempt their proposed rules from the hearing and approval procedures of IC 4-22-2.
- (3) Exempt all bodies corporate and politic from IC 4-22-2.
- (4) Adopt standardized language to clearly state which bodies corporate and politic are exempt from IC 4-22-2 and which are not subject to IC 4-22-2.

Mr. Angelone offered for the Commission's review PD 3152, which would implement potential legislative solution #(1) above and would, in addition: (A) authorize bodies corporate and politic to adopt emergency rules; and (B) require that rules that are in effect but were not adopted under IC 4-22-2 be filed with the Secretary of State, published in the Indiana Register, and codified in the Indiana Administrative Code. The Commission took PD 3152 under advisement.

VII. CHANGING REFERENCES TO "POOR RELIEF" IN THE INDIANA CODE

Mr. Stieff said that P.L. 262-3003 required the Legislative Services Agency to prepare legislation for introduction in the 2004 legislative session to replace the term "poor relief" with "township assistance" in Indiana Code provisions referring to the township poor relief program. Senate Bill 39, which made these changes, was introduced during the 2004 session. It was approved by the Senate and received a favorable recommendation from the House Committee on Local Government. However, the bill advanced no further.

Mr. Stieff said a new bill would be prepared for introduction in the 2005 session, if that was the desire of the Commission. Senator Landske felt the revised bill should proceed. She also noted that there was no opposition to the bill last session. Mr. Steve Buschmann, Indiana Township Association, urged the Commission to proceed with the bill again this year.

VIII. TITLE 20 RECODIFICATION PROJECT: PROPOSED REORGANIZATION

Ms. Irma Reinumagi, Senior Staff Attorney and Recodification Editor, presented a proposed outline for the recodification of Title 20 of the Indiana Code concerning education. She explained that the recodification of Titles 20 and 21 is being planned as a two year process. She reported that in the recodification bill prepared for the 2005 legislative session, only those provisions of Title 20 concerning K-12 education and libraries will be reorganized; the provisions concerning higher education will not be affected. Following the 2005 session, it is anticipated that the provisions of Title 20 concerning higher education will be restated and moved to Title 21 (currently Education Finance), while the provisions of Title 21 concerning K-12 finance will be restated and moved to Title 20. Accordingly, after the 2006 legislative session, if the proposed organizational scheme is adopted by the Code Revision Commission, Title 20 will concern Elementary and Secondary Education (including education finance), and Title 21 will concern Higher Education.

Ms. Reinumagi distributed the proposed outline reorganizing the two titles. She also stated that she would prepare a companion bill for the Commission's consideration to deal with obsolete provisions, etc., in current law. In response to questioning by Commission members, Ms. Reinumagi informed the Commission that she would be preparing disposition and derivation tables containing both the old citations and the new citations of the recodified language.

Senator Landske asked for comments from the public. Ms. Gail Zeheralis, Indiana State Teachers' Association, inquired whether vocational and technical education teachers would still be licensed through the professional standards board. Ms. Reinumagi affirmed that they would.

Ms. Libby Cierzniak, Baker and Daniels Law Firm, asked whether a provision concerning reporting requirements for the Indianapolis Public Schools (IPS), currently included as part of the general school corporation performance reports, will be placed with other Code provisions that related specifically to IPS. Ms. Reinumagi answered in the affirmative.

Mr. Frank Bush, Indiana School Boards Association, expressed concern about the decision to recodify Title 20. He thought the recodification would cause initial confusion. He was very concerned about making all the proposed changes to the Indiana Code and questioned the necessity for doing so.

Mr. Terry Spradlin, Department of Education, commended Ms. Reinumagi for the work she had done on the project so far. He reported that Ms. Reinumagi approached the Department of Education two months ago to request their input on the proposed reorganizational scheme. He thought the proposed

outline was a very good working outline and he committed the Department to working with LSA throughout the project.

Ms. Reinumagi asked that the Commission approve the proposed organizational outline so that she might move forward with the draft. A motion was made and adopted to approve the outline.

IX. CLOSING

The next meeting of the Code Revision Commission, tentatively scheduled for October 20, 2004, has been CANCELLED. A new notice will post when the next meeting is scheduled.

X. ADJOURNMENT

The meeting was adjourned by Senator Landske at 3:15 p.m.